REVISED

LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

Board	Author	Bill Number
California Integrated Waste Management Board	Ortiz	AB 1699
Sponsor	**Related Bills**	**Date Amended**
Author	AB 84 (Woods) AB 2632 (Thomson) AB 2652 (Cardoza) SB 381 (Thompson)	March 9, 1998

BILL SUMMARY

AB 1699 would amend the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, Chapter, 787, Statutes of 1991 (AB 1378, Connelly), by requiring the State Air Resources Board (ARB) to establish a fine particulate matter monitoring program in cooperation with districts in and adjacent to the Sacramento Valley. Additionally, the bill would require the California Department of Food and Agriculture (CDFA), in cooperation with the State Energy Resources Conservation and Development Commission, the California Integrated Waste Management Board (CIWMB) and the ARB to prepare and submit to the Legislature a study on ways of ensuring consistency and predictability in the supply of rice straw for cost-effective alternative uses.

BACKGROUND

According to the author, rice straw smoke represents a public health problem for the Sacramento area. While the law generally requires reduced levels of acres of rice fields that are burned, rice straw continues to be burned, which causes smoke-related public health problems. The author introduced this bill to: (1) eliminate burning on days when there is a possibility of causing smoke problems; (2) require air pollution officers to notify the public officers when burning will be allowed; (3) require the State Air Resources Board to recommend improvements in the regulation and enforcement of local burning activities for local air boards; and (4) get State agencies' assistance with creation of markets for rice straw.

Departments That May Be Affected		
State Air Resources Board, California Department of Food and Agricultural, State Energy Resources and Development Commission, California Integrated Waste Management Board		
Committee Recommendation	Committee Chair	Date 9-5

Management of Rice Straw

The Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991 required progressive reductions in the number of acres where rice straw burning is allowed. By the year 2000, 125,000 acres, or 25 percent of each grower's land, whichever was less, could be burned to control stem rot and other plant diseases. In 1997, Chapter 745 (SB 318, Thompson) was enacted, which temporarily revised the schedule that limits the burning of rice straw in the Sacramento Valley Air Basin. Chapter 745 specified the number of acres that may be burned annually for five years. Additionally, Chapter 745 revised the conditions governing the burning of rice straw for disease control and provided loan guarantees and cost-sharing grants to promote alternative uses of rice straw. We note that the mandated reduction of acres burned will likely increase the potential for more rice straw to be disposed in landfills near rice-growing areas.

Chapter 991, Statutes of 1996 (AB 3345, Bustamante) requires the CIWMB, by December 31, 1998, to conduct a feasibility study on expanding the use of agricultural and forest waste in the production of commercial products. According to the sponsor, the purpose of this statute is to identify the economic benefits of the productive use of agricultural and forest waste in the development of commercial products composed of these recycled materials. The sponsor believes that the study will help engender stronger pro-recycling political support from areas and communities where it does not presently exist. The CIWMB is in the process of preparing this report.

Chapter 787 (Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991) established an advisory committee whose responsibilities included the development of a list of priority goals and feasible and cost-effective alternatives to rice straw burning. In their 1995 report to the Legislature on the rice burning phase down, over 50 alternatives to field burning were identified. Most, if not all of these alternatives, were deemed economically infeasible on any large scale.

The Rice Straw Burning Alternatives Committee reports that the annual production of rice straw is approximately 1.5 million tons. Currently, only a small portion of the total agricultural waste generated every year is disposed in California's landfills. Most of this waste either is burned in the field, burned in wood waste powerplants or left in the field. The primary potential commercial uses include chip and fiberboard, paper products, wallboard and paneling, rice straw bales, compost, solid fuel for power generation, animal feed and bedding, and ethanol and methanol for fuels.

RELATED BILLS

Four bills related to AB 1699 have been introduced during the 1997/98 Legislative Session:

- AB 84 (Woods) would have defined "products manufactured with residues from agricultural cropping activities" to include, but not be limited to, copy paper, stationery, newsprint, cardboard, fiberboard, pallets, sheeting, boards, tiles, insulation, and compost. Additionally, AB 84 would have implemented a pilot program for State agencies to provide price preferences for products manufactured with residues from agricultural cropping activities. AB 84 was vetoed by the Governor.

- AB 2632 (Thomson) would require the ARB and the CDFA to conduct a study of the feasibility of converting rice straw to ethanol fuels. AB 2632, introduced on February 23, 1998, has been referred to the Assembly Rules Committee for policy committee assignment.

- AB 2652 (Cardoza) would permit the San Joaquin Valley Unified Air Pollution Control District to develop guidelines, which are to be submitted to the ARB, to allocate the amount of agricultural burning that may be authorized on any day in the San Joaquin Valley air basin, without regard to whether the day is designated as a nonburning day. Additionally, the bill would require the ARB to promulgate the guidelines without alteration. AB 2652, introduced on February 23, 1998, has been referred to the Assembly Rules Committee for policy committee assignment.

- Chapter 745 (SB 318, Thompson, Statutes of 1997) temporarily revised the schedule that limits the burning of rice straw in the Sacramento Valley Air Basin. Additionally, the bill revised the conditions governing the burning of rice straw for disease control and provided loan guarantees and cost-sharing grants to promote alternative uses of rice straw. The intent of the bill was to shift more of the burning to the spring months when the meteorological conditions in the Sacramento Valley are better for pollutant transport and dispersion.

EXISTING LAW

State law:

1. Specifies the number of acres that may be burned annually and establishes a maximum number of acres that may be burned, in specified fall months, through the year 2002 (Health and Safety Code [HSC] §41865 [c] [1]):

Year	Maximum Annual Burn Acres	Maximum Fall Burn Acres
1998	240,000	90,000
1999	240,000	82,000
2000	240,000	74,000
2001	240,000	66,000
2002	240,000	60,000

2. At the conclusion of the five-year revised schedule, burn levels will revert to the existing schedule at the conditional burning stage (2000 point), i.e., in 2003 and thereafter, the lesser of 25 percent or 125,000 acres may be burned, with burning eligibility subject to a "conditional burning permit (HSC §41865 [I]);

3. Revises the definition of "administrative burning" to include burning on rice research facilities, not to exceed 2000 acres (HSC §41865 [k]);

4. Allows an exemption from the burning limitation for:

   a. "Extraordinary circumstances," pursuant to a determination by the Air Resources Board (ARB) and the Department of Food and Agriculture (CDFA) (HSC §41865 [j]);

   b. "Administrative burning" along roads, ditches or levees adjacent to a rice field (HSC §41865 [k]);

5. Requires the ARB, in consultation with the CDFA, the advisory committee, and the Department of Commerce, to develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-farm uses by the year 2002 (HSC §41865 [m]);

6. Defines "off-farm uses" to include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper and livestock fees (HSC §41865 [m]);

7. Requires the ARB and the CDFA to jointly report to the Legislature on the progress of the phase down of, and the identification and implementation of alternatives to, rice straw burning by September 1, 1999 (HSC §41865 [n]);

8. Requires the report to be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year (HSC §41865 [n]);

9. Establishes a $5 million fund, administered by ARB, to provide cost-sharing grants of up to 50 percent to develop demonstration projects for technologies that use rice straw (HSC §39752);

10. Requires ARB and local air pollution control agencies, to the extent that resources are available, to:

    a. Improve management of citizen complaints; and

    b. Respond more quickly to help maximize burning days when meteorological conditions are best suited for smoke dispersion; (HSC 41865 [u]);

11. Requires ARB and CDFA to jointly establish an advisory committee to assist with the identification and implementation of alternatives to rice straw burning field (HSC §41865 §[l]); and.

12. Requires the CIWMB to conduct, by December 31, 1998, a feasibility study on expanding the use of agricultural waste and forest waste in the production of commercial products and to transmit the study to the Governor and the Legislature by December 31, 1998 (Public Resources Code §42003).

ANALYSIS

AB 1699 would:

1. Require the ARB to establish a fine particulate matter monitoring program in cooperation with districts in and adjacent to the Sacramento Valley, which would achieve the following:

   a. Evaluate the contributions made by the burning of rice straw to fine particulate matter levels in and adjacent to the Sacramento Valley on a seasonal and episodic basis;

   b. Establish a program to provide daily forecasts of fine particulate matter effects from rice straw burning smoke in and adjacent to the Sacramento Valley;

   c. Make daily reports to the public (as soon as this is reasonably possible) of the previous day's fine particulate mater levels in and adjacent to the Sacramento Valley; and

   d. Report the status of monitoring and forecasting programs, and an assessment of the air quality impacts of rice straw burning in each of the required legislative reports, as specified, on rice straw;

2. Define "fine particulate matter: as particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers;

3. Require the ARB to prepare and submit a report and make recommendations for improving the local regulation and enforcement of laws governing rice straw burning in the Sacramento Valley Air Basin by January 1, 2000;

4. Require the ARB and the Sacramento Valley air pollution control districts to provide advance written public notice of rice straw burning days, which must be provided on the Internet and to the local news media; and

5. Require the CDFA, in cooperation with the State Energy Resources Conservation and Development Commission, the CIWMB and the ARB, to prepare and submit to the Legislature a study on ways of ensuring consistency and predictability in the supply of rice straw for cost-effective alternative uses, as specified, no later than September 1, 1999.

COMMENTS

Waste Diversions and Environmental Benefits. The CIWMB is supportive of activities aimed not only at preventing residues from agricultural cropping activities from being landfilled, but also providing the basis for new enterprise development particularly in rural counties throughout California. The CIWMB has supported numerous rice straw projects including a rice straw bale soundwall and the use of this material in paper product applications. Further by finding alternative uses for residues from agricultural cropping activities, particularly rice straw, there is the added benefit that this material will not be disposed in solid waste landfills and more importantly, fewer

rice fields will be burned, which will greatly decrease air pollution, thereby enhancing the health and safety of the public.

Required Reports on Use of Rice Straw. AB 1699 requires the CDFA in cooperation with the CIWMB, the ARB, and the State Energy Resources Conservation and Development Commission, to submit to the Legislature by September 1, 1999, recommendations for ensuring consistent and predictable quantities of rice straw for cost-effective alternative uses. These recommendations must be consistent with the goals for the development of alternative uses established by the Rice Straw Burning Alternatives Advisory Committee. The recommendations as well as the analysis performed to develop the recommendations should assist the CIWMB's Recycling Market Development Zone program to develop markets for agricultural and other wood waste residues. Additionally, the recommendations are to be consistent with the implementation plan and schedule for the 50 percent diversion mandate of Chapter 745 (SB 318, Thompson, Statutes of 1997). The Chapter 745 implementation plan is being prepared by ARB, CDFA, and the Alternatives Advisory Committee and is due to be completed by September 1, 1998.

Chapter 991(AB 3345, Bustamante, Statutes of 1996) required the CIWMB to do a feasibility study on expanding the use of agricultural waste and forest waste in the production of commercial products. The CIWMB is required to transmit this study to the Governor and the Legislature by January 1, 2000. The requirements of this statute were not excluded by Chapter 970 (AB 116, Speier, Statutes of 1996), which provided for a moratorium on certain reports to the Legislature and the Governor.

The development of legislative recommendations will probably be similar to the Cal/EPA work on biomass cost-shifting strategies. In that project, the various stakeholders proposed strategies, which were considered in public workshops with Cal/EPA staff compiling and analyzing the strategies. Staff prepared the legislative report, *Cost-Shifting Strategies for the Biomass Industry*, which was required by Chapter 854 (AB 1890, Brulte, Statutes of 1996). Each of the proposed strategies was discussed in the report.

CIWMB's Responsibilities in AB 1699. The CDFA has primary responsibility for the preparation of the recommendations. The language in AB 1699 describes the development of the recommendations as a study. This is probably a statement of the work that must be done. Most of the background research and analysis has either already been done by the Alternatives Advisory Committee in its 1995 and 1997 reports or will have been performed in the Chapter 745 (Thompson, SB 318, Statutes of 1997) and Chapter 991 (AB 3345, Bustamante, Statutes of 1996) studies, which are currently underway. The CIWMB's role will be to participate in the process. The expended workload would be no more than one-fifth to one-quarter of an associate analyst's time from about November 1998 to August/September 1999. During that time there will be a couple of four-to-six week periods of intensive activity. During these periods the assigned analyst may be spending 50 percent of his/her time on this project.

Rice Straw Disposed in Landfills. Historically, rice straw has not been disposed in landfills. According to the Air Resources Board and Department of Food and Agriculture 1995 Report to the Legislature, "Approximately 95 percent of the unburned rice straw was incorporated into the soil by additional field activities (with or without flooding). Some growers have provided baled straw for testing in a variety of manufacturing operations and straw-to-energy processes." This statement

supports the CIWMB's 1990 waste generation data that indicates that very little (69,898 tons/year - approximately .2 percent of the total waste disposed statewide) crop residue (all types of crops) is disposed in landfills. This information verifies that traditionally landfilling has not been a disposal option employed by farmers, which is probably a reflection of disposal costs.

SUGGESTED AMENDMENT

The author may wish to consider the following technical amendment:

> On page 12, lines 17 and 18, of the March 9, 1998 version of AB 1699, the bill refers to "the requirements of paragraph (2) of subdivisions (l) and (m) of Section 41865 of the Health and Safety Code."
>
> There is no paragraph 2 of subdivision (m).

LEGISLATIVE HISTORY

AB 1699 was introduced on January 26, 1998. The bill is set to be heard before the Assembly Natural Resources Committee on March 16, 1998.

Support: Sierra Club
American Lung Association of California

Opposition: None received.

FISCAL AND ECONOMIC IMPACT

AB 1699 would impose minor absorbable fiscal costs (.25 PY) on the Integrated Waste Management Account. The CIWMB would have a one-time reporting requirement along with other State agencies. The workload impact would be minimal, as the bulk of information necessary to comply with this proposal is either available from completed studies or will be available upon completion of those studies referenced in this analysis, which are already underway.

AB 1699 could have a significant positive economic impact for rice growers if the study identifies new ways that rice straw can be economically used in manufacturing processes. The study and report requested by this legislation may not only reduce the cost of disposal by diverting rice straw waste from landfills, but could also provide the basis for new enterprise development throughout California. Further, by finding alternative uses for rice straw, there is the added benefit that fewer rice fields will be burned, which will greatly decrease air pollution, thereby improving the health and safety of the public. Finally, this could result in a significant, as yet unquantifiable cost avoidance, in the arena of public health.

LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

Board	Author	Bill Number
California Integrated Waste Management Board	Firestone	AB 2181
Sponsor	Related Bills	Date Amended
Author	AB 228 (Migden) AB 964 (Bowen)	As Introduced

BILL SUMMARY

AB 2181 would clarify the definition of "each day of violation" with regard to accepting waste tires at an unpermitted waste tire facility and knowingly directing or transporting waste tires to an unpermitted waste tire facility. The bill would establish separate penalties for negligent and intentional violations of law, permit, rule, regulation, standard, or requirement issued or adopted pursuant to waste tire law. Additionally, the bill would require that the size of individual pieces of shredded tires deposited in landfills not exceed two inches in length in order to encourage the availability of waste tires for productive end use and to remove any economic bias that favors landfill deposition of shredded waste tires.

BACKGROUND

AB 2181 is sponsored by the author, who wishes to promote the productive use of waste tires. In 1997 Assemblyman Firestone authored AB 375, a comprehensive tire bill that would have (1) raised the tire fee and made it payable by motor vehicle manufacturers and tire wholesalers, (2) established a tire recycling reimbursement program, (3) required all state agencies to give a purchase preference to asphalt pavement containing recycled rubber, (4) prescribed minimum combined state agency utilization requirements for asphalt pavement containing recycled rubber, and (5) addressed several violation and enforcement issues. AB 375 failed passage on the Assembly Floor (20-41) on June 2, 1997, and was granted reconsideration and moved to the Assembly Inactive File where it died after failing to move out of the Assembly by the January 31, 1998 deadline. According to Assemblyman Firestone's office, AB 2181 will be much more narrow in focus.

The California Tire Recycling Act (Public Resources Code [PRC] §42860-42895), Waste Tire program (PRC §42800-42859), and Tire Hauler Registration program

Departments That May Be Affected		
California Integrated Waste Management Board		
Committee Recommendation	Committee Chair	Date
		9-12

(PRC §42950-42967) require the California Integrated Waste Management Board (CIWMB) to administer a tire recycling program and a waste tire facility and hauler regulatory program. The goal of these programs is to promote and develop alternatives to the landfill disposal of whole waste tires and protect the public health and safety and the environment with regard to waste tire facilities and haulers. Within the Act, PRC Section 42885 created the California Tire Recycling Management Fund, which is used to support tire recycling and regulatory activities. Revenues in the fund are generated by a fee of $0.25 on each new tire sold (approximately $4.5 million projected in Fiscal Year 1997-98). In addition, the CIWMB has a program to encourage the use of retreaded tires and recycled materials in paving materials.

California generates the largest number of tires annually and has the smallest recycling fee in the United States. There are insufficient markets to handle the annual flow of waste tires and even fewer opportunities to utilize legacy tires. Legacy tires are those which have been stockpiled over the years in the hope that they would someday have positive value, and for which there is no recycling fee associated. Legacy tires are more difficult to find markets for because of their generally unclean state, and are sometimes intermingled with debris and other waste materials.

On March 31, 1997, the Assembly Natural Resources Committee held an oversight hearing on California's tire disposal and recycling system. At that hearing, the CIWMB testified that there are more than 30.5 million waste or used tires produced in California annually. Additionally, the CIWMB estimates that there are currently more than 30 million tires stockpiled throughout the state in legal and illegal piles. California waste tire facilities also receive approximately 4-5 million tires exported annually from other states such as Oregon, Arizona, and Utah.

Approximately 15 million tires go into landfills or monofills or are disposed of illegally. Only 20 million waste or used tires are put to productive use or exported annually in this state. Waste tire generation in California is growing by approximately 2% annually.

RELATED BILLS

AB 228 (Migden) would add abandonment of tires to the circumstances under which a person can be convicted of a crime. It would also allow the CIWMB to obtain access to a site, for purposes of remediation, where tires are unlawfully housed when the situation presents a significant threat to public health or the environment. Finally, it would allow a city, county, or city and county to request designation as an enforcement authority from the CIWMB, and allow penalties collected to go to the city, county, or city and county. AB 228 passed the Assembly (46-30) on January 28, 1998 and has been referred to the Senate Environmental Quality Committee (no hearing date set). The CIWMB has taken a "support" position on AB 228.

AB 964 (Bowen) would require the California Integrated Waste Management Board (CIWMB) to specify in any contract it enters into for waste tire pile cleanup that the contractor provide a productive end use for all tires that are cleaned up. Additionally, the bill would require the CIWMB, upon the request of the contractor, to permit a portion of the waste tires, not to exceed 25% of the waste tire pile that the CIWMB determines by resolution to be too old or

contaminated to be put to a productive end use, to be disposed of by landfilling or monofilling. Further, AB 964 would require the CIWMB, as part of its annual Budget request, to allocate among the various purposes authorized by the paving materials statute, the total funds requested for grants, loans, and contracts under the tire recycling program. AB 964 passed the Assembly (48-24) on January 28, 1998 and has been referred to the Senate Environmental Quality Committee (no hearing date set). The CIWMB has not taken a position on AB 964.

EXISTING LAW

State law:

1. Requires any person who accepts waste tires at a major waste tire facility which has not yet been issued a permit or knowingly directs or transports waste tires to a major waste tire facility which has not been issued a permit, upon conviction, to be punished by a fine of not less than $1,000 or more than $10,000 for each day of violation, by imprisonment in county jail for not more than one year, or by both fine and imprisonment (PRC §42825).

2. Requires any person who accepts waste tires at a minor waste tire facility which has not been issued a permit or knowingly directs or transports waste tires to a minor waste tire facility which has not been issued a permit, upon conviction, to be punished by a fine of not less than $500 or more than $5,000 for each day of violation, by imprisonment in the county jail for not more than one year, or by both fine and imprisonment (PRC §42835).

3. Requires any person who intentionally or negligently violates any CIWMB permit, rule, regulation, standard or requirement issued or adopted to be liable for a civil penalty not to exceed $10,000 for each violation or, for continuing violations, for each day that the violation continues (PRC §42850).

ANALYSIS

AB 2181 would:

1. Clarify the definition of "each day of violation" for any person who accepts waste tires at an unpermitted major or minor waste tire facility or any person who knowingly directs or transports waste tires to an unpermitted major or minor waste tire facility. Define "each day of violation" as each day on which a violation continues, unless the person has filed a report with the CIWMB disclosing the violation and is in compliance with any order regarding the waste tires issued by the CIWMB, a hearing officer, or a court of jurisdiction;

2. Establish that the penalty, for any person who *negligently* violates any provision of law, permit, rule, regulation, standard, or requirement issued or adopted pursuant to waste tire law (Chapter 16, commencing with §42800), shall be a fine of not less than $500 nor more

than $5,000 for each violation, or for continuing violations, for each day that the violation continues;

3. Establish that the penalty, for any person who *intentionally* violates any provision of law, permit, rule, regulation, standard, or requirement issued or adopted pursuant to waste tire law (Chapter 16, commencing with §42800), shall be a fine not to exceed $10,000 for each day of violation, by imprisonment in the county jail for not more than one year, or by both; and

4. Require that the size of individual pieces of shredded tires deposited in landfills shall not exceed two inches in length in order to promote the availability of waste tires for productive end use and to remove any economic bias that favors landfill deposition of shredded waste tires. Would state that productive end use does not include landfill deposition of shredded tires.

COMMENTS

Most of AB 2181 Similar to AB 375 of 1997. The provisions of AB 2181, except for the section dealing with the size of individual pieces of shredded tires deposited in landfills, would replicate sections of Assemblyman Firestone's AB 375 that focused on enforcement against violators of waste tire law. AB 375, a much more comprehensive tire bill, failed passage on the Assembly Floor (20-41) on June 2, 1997, and was granted reconsideration and moved to the Assembly Inactive File where it died after failing to move out of the Assembly by the January 31, 1998 deadline.

Size of Shredded Tires. AB 2181 would specify that the size of individual pieces of shredded tires deposited in landfills shall not exceed two inches in length in order to promote availability of waste tires for productive end use and to remove any economic bias that favors the depositing of shredded tires in landfills. This section also specifies that the deposition of shredded tires in landfills does not constitute productive end use. It is currently cheaper to take tires to a landfill because they only have to be halved, quartered or baled before disposing of them, whereas for most productive end uses such as crumb rubber and molded rubber products, they must be shredded. According to Modesto Energy Limited Partnership, who asked for this section of AB 2181, they want to encourage better uses than landfill disposal for waste tires.

Violations and Law Enforcement. AB 2181 would strengthen enforcement provisions allowing for more efficient prosecution of violators. The bill would increase the penalties for acceptance of waste tires at an unpermitted waste tire facility or for directing tires to an unpermitted waste tire facility by defining "each day of violation." The definition includes not only each day the tires are accepted or transported to the unpermitted site, but also includes each day the waste tires remain at the facility. Each day they remain at the site is considered a separate, additional violation unless the person has filed a report with the CIWMB disclosing the violation and is in compliance with any order regarding the waste tires issued by the CIWMB, a hearing officer or a court. AB 2181 would also create a separate violation penalty that includes jail time for

"intentionally" violating any requirement related to major or minor waste tire facility permits. These tougher penalties are helpful to the CIWMB and district attorneys as a means of enforcing the law. Jail time, in particular, may be more of a deterrent to unscrupulous tire haulers than fines.

Generator Responsibilities. The only real weakness in AB 2181's enforcement provisions would be the wording that states "any person...who *knowingly* directs or transports" waste tires to a major or minor waste tire facility which has not been issued a permit shall be punished by a fine or a prison sentence. This provision would allow a generator to plead ignorance about the fate of its scrap tires once they leave its facility. In the competitive tire business, ignorance allows some generators to gain an economic advantage by use of unscrupulous haulers with little chance of repercussion. However, if the recently implemented scrap tire hauler regulations were modified to require the ultimate waste tire/disposal facility to return (by mail) a copy of the generator's manifest, then the generator could no longer plead innocence to improper disposal. All ethical tire dealers would likely favor this modification because it will discourage their less ethical counterparts from gaining a competitive advantage through improper disposal. The manifest should identify the disposal facility, its permit number and expiration date. This system has worked effectively in Texas. AB 2181 should be revised to require the ultimate waste tire/disposal facility to return (by mail) a copy of the generator's manifest.

SUGGESTED AMENDMENTS

Require the ultimate waste tire/disposal facility to return (by mail) a copy of the generator's manifest.

LEGISLATIVE HISTORY

AB 2181 was introduced on February 19, 1998. The bill has been referred to the Assembly Natural Resources Committee; no hearing date has been scheduled.

Support: California District Attorneys Association
Los Angeles District Attorneys Association
Modesto Energy Limited Partnership (MELP)

Opposition: None received

FISCAL AND ECONOMIC IMPACT

By increasing penalties for persons who intentionally violate any provision of waste tire law, permit, rule, regulation, standard, or requirement, AB 2181 could bring increased revenues to the CIWMB tire program.

AMENDMENTS TO AB 2181 (FIRESTONE)
AS INTRODUCED

On page 4, line 13, insert:

Section 42961.5 of the Public Resources Code is amended to read:

42961.5. The board shall develop a waste tire manifest system for registered waste tire haulers that complies with all of the following conditions:

(a) The board shall develop a waste tire manifest form that shall be completed and shall accompany each shipment of waste tires from the point of origin to the processing, collection, storage, or disposal facility.

(b) The manifest form shall be signed by the generator, the waste tire hauler, and the processing, collection, storage, or disposal facility. Each party shall retain one copy of the manifest form.

(c) If waste tires are transported from a collection center, a new manifest shall be used until the waste tires reach a final processing, collection, storage, or disposal facility.

(d) Once tires have reached their final waste tire or disposal facility destination, a copy of the generator's manifest shall be returned by mail to the generator.

~~(d)~~ (e) No transporter shall receive waste tires and no person or facility shall accept waste tires for processing, collection, storage, or disposal without a properly completed manifest form, with the exception that the processor may accept waste tires that are delivered by a waste tire hauler without a manifest, if the processor reports the name of the waste tire hauler and the vehicle license number to the board.

~~(e)~~ (f) A waste tire hauler shall not transport any waste tires without having at all times, in the vehicle transporting the waste tires, a copy of the manifest for the waste tires, which shall be presented upon demand of an authorized representative of the board.

~~(f)~~ (g) Each party required to sign a manifest shall maintain it for three years and shall make it available for review during regular business hours.

LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

Board	Author	Bill Number
California Integrated Waste Management Board	Olberg	AB 2353
Sponsor California Integrated Waste Management Board (Lead Agency), State Water Resources Control Board, Department of Toxic Substances Control	Related Bills	Date Amended As Introduced January 20, 1998

BILL SUMMARY

AB 2353 would authorize a state agency to impose additional or more stringent requirements upon an admitted surety insurer if they are required for the state agency to comply with federal law. In addition, this bill would require that any such requirement be complied with before the admitted surety insurer is deemed sufficient.

BACKGROUND

This proposal is co-sponsored by the California Integrated Waste Management Board (CIWMB), the State Water Resources Control Board (SWRCB) and the Department of Toxic Substances Control (DTSC). The CIWMB is acting as the lead agency.

The purpose of the three agencies in sponsoring this bill is to allow the CIWMB, SWRCB, and the DTSC to require that an admitted surety insurer be listed in Circular 570 of the U.S. Department of the Treasury, in compliance with federal surety requirements, in order for the three agencies to maintain compliance with the federal Resource Conservation and Recovery Act (RCRA) - Subtitle D (CIWMB/SWRCB) and Subtitle C (DTSC) program authority, which has been delegated to each agency by the federal government.

The CIWMB and the SWRCB administer the California solid waste landfill program in lieu of the federal Environmental Protection Agency (EPA) pursuant to federal delegation (40 CFR Part 258 – Subtitle D) while the DTSC administers the California hazardous waste program in lieu of EPA pursuant to federal delegation (40 CFR Part 271, Subtitle C). In order to continue the administration of these programs, these agencies must maintain conformance with federal law.

Departments That May Be Affected California Integrated Waste Management Board, State Water Resources Control Board, Department of Toxic Substances Control		
Committee Recommendation	Committee Chair	Date 9-18

One aspect of both the Subtitle D and Subtitle C programs is the provision that operators of solid or hazardous waste facilities provide financial assurance to the administrating state agencies. The financial mechanism must demonstrate that adequate funds are available to provide for the closure and post-closure maintenance and/or to fund the costs of corrective action at the respective solid waste facility and provide for closure and postclosure maintenance costs of hazardous waste treatment, storage and disposal facilities. One type of financial mechanism that is acceptable under the Subtitle D and C programs is the surety bond.

The federally accepted minimum for a surety bond covering the closure and postclosure maintenance of solid waste disposal facilities as well as for hazardous waste treatment, storage, and disposal facilities have been determined by and set within the requirements of the U.S. Department of the Treasury for surety companies to issue bonds on federal projects. This minimum standard is that the surety company be among those listed as holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies in Circular 570 of the U.S. Department of the Treasury which is published in the Federal Register on July 1 of each year.

Chapter 379, Statutes of 1992 (SB 1502, Davis) amended the Code of Civil Procedure at §995.660 and §995.670 such that any governmental agency can not object to any surety company issuing a bond, so long as the surety company meets the requirements of the California Department of Insurance.

However, the federal EPA Subtitle D and C programs that have been delegated to the CIWMB, SWRCB, and DTSC require that surety companies meet the federal requirements (identified above), which are more stringent than those required by the California Department of Insurance.

Thus, the enactment of Chapter 379 placed the CIWMB, SWRCB, and the DTSC, as well as any other state agencies managing federal programs that accept surety bonds, in a conflicting situation. If the agencies accept a surety bond issued in accordance with California statute (Chapter 379) they are in compliance with state law but are out of compliance with the requirements of their federal EPA delegated program. Conversely, if the agencies accept the bonds issued in accordance with federal statute, they are in compliance with their federal EPA delegated program and out of compliance with California statute (Chapter 379).

EXISTING LAW

Federal law:

1. The financial responsibility requirements of Title 40 of the Code of Federal Regulations, Part 258, Subpart G, §258.74(b) and Parts 264 and 265 were adopted to provide minimum nationwide standards for protecting human health and the environment under RCRA Subtitle C and D criteria. The §258.74(b) requirements state that the surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in Circular 570 of the U.S. Department of the Treasury on Federal bonds.

State law:

1. Requires that an admitted surety insurer submit prescribed documents to a court or officer if an objection is made to the sufficiency of the insurer on a bond or if the bond is required to be approved (Code of Civil Procedure §995.660).

2. States that if the admitted surety insurer submits the prescribed documents and:

   a. if it appears that the bond was duly executed;

   b. that the insurer is authorized to transact surety insurance in the state; and

   c. that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond;

   Then, the insurer is sufficient and shall be accepted or approved as surety on the bond, subject to §12090 of the Insurance Code (Code of Civil Procedure §995.660).

3. Prohibits a state or local agency from imposing further requirements on an admitted surety insurer whenever an objection is made to the sufficiency of the admitted surety insurer on the bond or if the bond is to be approved (Code of Civil Procedure §995.670).

EXISTING REGULATIONS

Solid waste surety bond regulations:

1. The surety bond regulations for both the California Integrated Waste Management Board (CIWMB) and the State Water Resources Control Board (SWRCB) were relocated to the newly adopted Title 27, California Code of Regulations (CCR), Division 2, Subdivision 1, Chapter 6, Subchapter 3, Article 2, §22244. The Title 27 regulations contain joint CIWMB and SWRCB requirements for solid waste landfills. The CIWMB/SWRCB surety bond regulatory requirements were patterned after the California Department of Toxic Substances Control (DTSC) and the U.S. EPA hazardous waste treatment, storage, and disposal facility requirements.

Hazardous waste surety bond regulations:

1. Surety bond regulations for hazardous waste facilities administered by the Department of Toxic Substances Control (DTSC) are specified in Title 22, CCR, Division 4.5, §66264.143, 66264.147, 66265.143, and 66265.147.

ANALYSIS

AB 2353 would:

1. Authorize a state agency to impose additional or more stringent requirements upon an admitted surety insurer if the requirements are required in order for the state agency to comply with federal law.

2. Require that any such requirement be complied with before the admitted surety insurer is deemed sufficient.

COMMENTS

Imposition of additional requirements by a state agency. The change proposed by this proposal would allow the CIWMB, SWRCB, and DTSC which administer the federal EPA Subtitle D and C programs to require admitted surety insurers to comply with federal law, thus allowing these agencies to comply with existing agency programs and policies. In addition, this would ensure continued compliance by all three agencies with the Resource Conservation and Recovery Act (RCRA) Subtitle D (CIWMB/SWRCB) and Subtitle C (DTSC) program authority which has been delegated to each agency by the federal government.

Eliminate ambiguity and different standards, which create confusion for surety insurers and solid and hazardous waste facility owners. The fact that state law does not allow state agencies to conform to federal law for the federal EPA Subtitle D and C programs is confusing to surety companies, as well as solid and hazardous waste facility operators. The CIWMB has received numerous inquiries from surety companies asking why the agency won't approve surety bonds from companies that meet only the California Department of Insurance requirements, as well as from facility owners who indicate they could obtain surety bonds at a lower price from the California approved surety insurers. Staff has explained the agency federal program requirements and the potential liabilities that facility owners or the agency may face from persons initiating a lawsuit were the agency to accept a bond from a firm not listed on the federal Circular 570. This bill would eliminate the ambiguity, differences and confusion as well as allow state agencies to require admitted surety insurers to conform to federal law.

LEGISLATIVE HISTORY

AB 2353 was introduced on February 20, 1998 and was referred to the Assembly Rules Committee for policy committee assignment. There is no scheduled hearing date for this bill.

Support: Browning-Ferris Industries
Norcal Waste Systems, Inc.

Oppose: None at this time.

FISCAL AND ECONOMIC IMPACT

AB 2353 would have no fiscal impact on the CIWMB. Because enactment of AB 2353 would allow the CIWMB, SWRCB, and the DTSC to conform their surety requirements to federal law, the probability of challenges of State agency actions, as well as the potential costs associated with litigating those actions, should be minimized. The clarification of state agency authority as it relates to admitted surety requirements would result in a less confusing, time-consuming and potentially a less costly regulatory process for both surety companies and solid and hazardous waste facility operators.

REVISED

LEGISLATION AND PUBLIC EDUCATION COMMITTEE

BILL ANALYSIS

Board	Author	Bill Number
California Integrated Waste Management Board	Rainey	SB 698
Sponsor	**Related Bills**	**Date Amended**
First Brands, Inc.	AB 2555 (Aroner)	March 9, 1998

BILL SUMMARY

SB 698 would eliminate the current 30 percent recycled material use requirement for trash bags 0.75 mil and greater and replace it with two compliance options from which manufacturers may choose. Additionally, the bill would delete the exemption for adhesive, heat-affixed strap bags. Further, the bill would require the California Integrated Waste Management Board (CIWMB) to conduct a survey of manufacturers subject to this proposed legislation and report to the Legislature on its findings by October 1, 2001.

BACKGROUND

SB 698 is sponsored by First Brands, Inc., a manufacturer of plastic trash bags. First Brands believes that California law requiring 20 percent and 30 percent postconsumer plastic in trash bags is inappropriately difficult to implement. First Brands asserts that these levels of postconsumer plastic cause poor quality bags that consumers are unwilling to purchase. Additionally, First Brands asserts that, to satisfy California law while maintaining market share, it must bear additional costs to manufacture and inventory a product line for California and a separate product line for the rest of the country.

Bill Previously Heard Before CIWMB. The CIWMB took a neutral position on SB 698, as amended May 13, 1997. Since that time, the bill has been amended twice.

Departments That May Be Affected		
Trade and Commerce Agency, Department of General Services		
Committee Recommendation	Committee Chair	Date
		9-23

RELATED BILLS .

Related legislation includes AB 2555 (Aroner), sponsored by the Californians Against Waste. AB 2555 would require each producer and packager of plastic packaging material types, as defined, to ensure that on and after January 1, 2003, not more than 50 percent of its plastic packaging materials sold or offered for sale in California becomes waste, that on and after January 1, 2006, not more than 35 percent becomes waste, and, that on and after January 1, 2010, not more than 20 percent becomes waste. The bill was introduced on February 23, 1998 and has been referred to the Assembly Rules Committee for policy committee assignment.

EXISTING LAW

State law:

1. Requires every manufacturer of plastic trash bags .75 mil and thicker to ensure that at least 20% and, on and after January 1, 1997, at least 30% of the material used in those plastic bags is recycled plastic postconsumer material (RPPCM) (Public Resources Code [PRC] §42291).

2. Authorizes bag manufacturers to certify to the CIWMB if sufficient quantities or quality of postconsumer plastic is not available (PRC §42291).

3. Requires bag manufacturers to annually certify to the CIWMB that they have complied with the minimum content requirements (PRC §42293).

4. Requires wholesalers of plastic trash bags sold in California to certify to the CIWMB the name and physical location of each manufacturer from whom it purchases plastic trash bags (PRC §42294).

5. Authorizes manufacturers of bags that use adhesive, heat-affixed straps to petition the CIWMB for a variance from the minimum content requirements (PRC §42298).

ANALYSIS

SB 698 would:

1. Define "manufacturer" as a person who manufactures plastic trash bags for sale in California;

2. Define " plastic trash bag" as a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can-liner bags, kitchen bags, compactor bags, and recycling bags:

3. Provide that a plastic trash bag does not include a grocery sack or any other bag that is manufactured for intended use as a container to hold, store, or transport food;

4. Provide that a plastic trash bag does not include any plastic bag that is used for the purpose of containing either hazardous or medical waste;

5. Define "postconsumer material" as a finished product that would normally be disposed of as solid waste, having completed its intended end-use and product life cycle;

6. Provide that "postconsumer material" does not include manufacturing and fabrication scrap;

7. Define "regulated bag" as a plastic trash bag of 0.70 mil or greater thickness that is intended for sale in California;

8. Define "wholesaler" as any person who purchases plastic trash bags from a manufacturer for resale in California;

9. Provide, until January 1, 1998, that every manufacture that manufacturers plastic trash bags of .75 mil or greater thickness for sale in California shall ensure that at least 30% of the material used in those plastic trash bags is RPPCM;

10. Provide, after January 1, 1998, the manufacturer's required use of a RPPCM shall be determined by either:

    a. Ensuring that its plastic trash bags intended for sale in California contain a quantity of RPPCM equivalent to at least 10% of the weight of the regulated bags; or

    b. Ensuring that at least 30% of the weight of the material used in all of its plastic products intended for sale in California is RPPCM.

11. Delete requirements that plastic trash bag manufacturers ensure that those bags contain at least 20 percent postconsumer plastic by January 1996 and at least 30 percent postconsumer plastic by January 1997, but would leave in place the requirement that bags 1 mil or greater in thickness contain at least 10 percent postconsumer plastic;

12. Until January 1, 2001, require the CIWMB to provide plastic bag manufacturers with a credit of 1.2 pounds for every 1 pound of postconsumer plastic purchased from a California supplier;

13. Commencing March 1, 1999, and annually thereafter, require the trash bag manufacturers to certify to the CIWMB that they have complied with the required use of RPPCM;

14. Require the CIWMB, on or before October 1, 2001, to survey trash bag manufacturers to:

    a. Identify the name and physical location of suppliers certified by manufacturers;

    b. Identify the quality of RPPCM provided by suppliers within California and the quality of the material provided by suppliers outside of California;

    c. Provide recommendations regarding RPPCM content requirements based on the availability of that material;

    d. Identify gauge thickness of all regulated bags; and

    e. Determine national production versus production of a separate line for California;

15. Require the CIWMB to annually publish on or before July of every year, a list of any suppliers, manufacturers, or wholesalers who have failed to comply with this law;

16. Make ineligible for award of a State contract or subcontract, or the modification of an existing State contract, any company that fails to comply with this proposed statute;

17. Prevent any State agency from soliciting offers from, awarding contracts to, or modifying any existing State contract with any company that fails to comply with this proposed statute; and

18. Delete language that authorizes manufacturers of trash bags that use adhesive, heat-affixed straps to petition the CIWMB for a variance from the minimum content requirements.

COMMENTS

Purpose of Minimum Content Law Governing Plastic Trash Bags. The CIWMB's primary interest is the overall market for recycled plastic. The overall purpose of State minimum content law governing plastic trash bags is to foster a market for recycled plastic thereby, reducing the amount of plastic disposed in solid waste landfills.

Manufacturer Discretion Over Use of RPPCM in Trash Bags. Current law does not require the use of postconsumer plastic in every regulated trash bag, and the CIWMB has interpreted the requirement to apply to each manufacturer's annual aggregate production of plastic trash bags. Therefore, manufacturers have the discretion to use postconsumer plastic in any regulated trash bag, provided the manufacturer uses the minimum amount of postconsumer plastic during each calendar year. Regulation of minimum content applies to bags 0.75 mil or thicker that are for sale in California. Thinner bags and bags sold outside of California are not subject to the minimum use requirement.

Manufacturer Certifications. The CIWMB requires manufacturers to submit annual certifications by March 1 following the reporting year. Trash bag manufacturers certify that they have used the minimum amount of postconsumer plastic to manufacture the regulated bags

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sold in California. Wholesalers certify from whom they have purchased regulated trash bags and from where they were shipped into California. Exemptions from the use requirements are available to manufacturers if postconsumer plastic was not available within a reasonable time period, as defined in regulation, or if available postconsumer plastic did not meet quality standards established by the CIWMB. Chapter 821, Statutes of 1995 (AB 1851, Sher) exempted trash bags with heat-affixed straps for calendar year 1996 and created a variance process for such bags for calendar year 1997 and beyond.

Certification reports indicate:

- For the 1993 reporting period, 23 manufacturers certified having used 1,904 tons of postconsumer material (non-blended, 100% postconsumer content). Only one out of the 23 manufacturers did not meet the 10% use requirement in effect for 1993.

- For the 1994 reporting period, 41 manufacturers submitted certifications. Only one out of the 41 manufacturers did not meet the 30% use requirement in effect for 1994.

- For the 1995 reporting period, 41 manufacturers certified having used 5,350 tons of postconsumer material (non-blended, 100% postconsumer content). Of the 41 manufacturers submitting certifications, only 19 are regulated manufacturers. Of those regulated manufacturers, 15 complied with the 30% use requirement in effect for 1995, including the two largest manufacturers.

- For the 1996 reporting period, 45 manufacturers reported using 7,366 tons of RPPCM. Of the 45, 29 sold regulated trash bags; 25 complied with the 20% use requirement in effect for 1996.

Manufacturer Exemptions. No company has claimed an exemption based on poor quality or unavailability of postconsumer plastic. One company is seeking a public hearing to request an exemption for their bags with heat-affixed straps for 1997. For the 1993 and 1994 reporting periods, one company certified that it had not met the RPPCM use requirement. This number increased for the 1995 certification due to the increase from 10% to 30% in the RPPCM use requirement.

Elimination of the 30 Percent Requirement. This version of SB 698 would eliminate the current 30 percent use requirement in trash bags 0.75 mil and greater and replaces it with two compliance options from which manufacturers may choose:

a. Ensure that its plastic trash bags intended for sale in California contain a quantity of RPPCM equal to at least 10 percent of the weight of the regulated trash bags, OR,

b. Ensure that at least 30 percent of the material used in all of its plastic products intended for sale in California is RPPCM.

Proposed Amendment to Benefit Trash Bag Manufacturers. It is believed that at the 10 percent use requirement, trash bag manufacturers are more likely to make one product line for the entire country 9-27

containing 10 percent RPPCM, rather than a special "California line" to meet the mandates, which creates the possibility that the market demand for RPPCM may increase.

CIWMB Requirements. This bill would require the CIWMB to conduct a survey of specified manufacturers to gather five items of information. Of these five items, two can be acquired with minimum effort (these are defined in numbers 14(a) and (b) of the analysis section of this analysis). However, the remaining three items (defined in numbers 14(c), (d) and (e) of the analysis section) would be subjective and therefore could result in inconsistent information being collected as each manufacturer would likely have differing perspectives on both the availability of materials and types of production. Based on past experience, the cost to develop a survey document to gather this type of information will be costly and, due to the speculative nature of the information, its validity would be questionable. The report on this survey is required to be transmitted to the Legislature by October 1, 2001.

Additionally, SB 698 would require the CIWMB to annually publish on or before July a list of any suppliers, manufacturers, or wholesalers who have failed to comply with this law. We note that while certification has been an accepted practice, verification within existing resources could be extremely costly and therefore, likely impossible.

SUGGESTED AMENDMENTS

According to the author's office it is contemplated that this bill may be amended to include an urgency clause. Therefore, there is the possibility that SB 698 could become law prior to the end of the fiscal year. Attempting to notify manufacturers of the new use requirement and ensuring they have the ability to attain compliance under the new provisions proposed in this bill could prove challenging. Therefore, it may be better to make the changes effective January 1, 1999 rather than try to change the use requirement mid-year.

LEGISLATIVE HISTORY

SB 698 was introduced February 25, 1997. The bill passed (6-1) the Senate Environmental Quality Committee on April 21, 1997; passed the Senate Floor (27-0) on May 27, 1998 and failed passage before the Assembly Natural Resources Committee (4-1) on July 7, 1997. The author was granted reconsideration. SB 698 is set for hearing in the Assembly Natural Resources Committee on March 16, 1998.

Support: First Brands, Inc. (sponsor)
Tenneco Packaging
Poly-America

Opposition: None on file.

FISCAL AND ECONOMIC IMPACT

SB 698 would have an overall fiscal cost of $40,000 (1/4 PY) to the CIWMB:

- A one-time cost of $20,000 cost (1/4 PY) to the CIWMB for rewriting regulations governing manufacturing reporting of use of postconsumer plastic in trash bags. This cost would be $10,000 in FY 98/99 and $10,000 in FY 99/00. These costs would be borne by the Integrated Waste Management Account.

- An annual $20,000 (1/4 PY) to the CIWMB to revise the certification form and the development, conducting and reporting on the survey. Again, these costs would be borne by the Integrated Waste Management Account.

As a result of the successful diversion of solid waste from California's landfills, the Integrated Waste Management Account is experiencing declining revenues due to decreased tipping fees. For this reason, less money is available to implement CIWMB programs. Enactment of this legislation could result in less funding for other vital CIWMB programs.